

**Planning Commissioner's Written Comments
February 9, 2016**

Cornwallis Road Property II (Z1500031)

BRINE - This rezoning request is a followup to a previous request which was withdrawn. (I was not on the Commission at the time.) According to the staff report and comments made at the public hearing, this request is a considerable improvement over the previous request. I thought that there were a number of good features to the present proposal:

- A) Lower density than before;
- B) Single family housing (committed) rather than townhomes;
- C) Affordable housing component;
- D) Lower traffic impact than what would be allowed under the present land use and zoning;
- E) Buffer on the west side of the development (not required but committed);
- F) Pedestrian trail and greenway easements;
- G) Bicycle lane; and,
- H) Preservation of the historic structure on the site.

Nevertheless, the present proposal is still strongly opposed by the adjacent neighborhoods, primarily for environmental reasons. I felt that the neighbors had legitimate concerns about flooding, runoff and pollution. Therefore, although this proposal is better than the one before it, I believe that the applicant needs to go a little further. In particular, I believe that the applicant needs to lower the density to something under 4 DU/acre, a step that will also lower the impervious surface. (I point out that at 4.131 DU/acre, the applicant is not that far above 4 DU/acre.) I also concur with Commissioner Miller's point that more could be done to clarify aspects of this proposal. I voted against this rezoning request because I felt that there was room for further improvement.

BUZBY – See case A1500012.

FREEMAN – The responsibility of the stormwater device would fall on the home owner association. Stormwater replacement fund would need to be increased. Develop plan commitments missing *Smooth transition *Storm water commitment * Affordable housing “they took the retaining pond off of the plan so we wouldn’t think about it” Melvin Whitley 116 dwelling units would address some of the environmental.

GHOSH – This case is a revamped version of the Z1400040 case brought before us in July of last year. The applicant has taken time to address many of the concerns raised under the previous case. The result is far better than what was previously presented. It is less dense (4.131 units/acre as compared to 7.907 under the previous plan). It is more harmonious with the surrounding neighborhoods (single family instead of townhomes). And maybe most significantly, it is better for Durham (a commitment to 5 affordable housing units).

Prior to and throughout the public hearing, residents have expressed various concerns, particularly with respect to transition, aesthetics, and stormwater. The proposed transition from 2 units/acre in the Colony Park neighborhood to the west to 4.131 units/acre in the proposed development seems reasonable and appropriate. Tack on to that transition the proffered 30-foot, .4 opacity buffer and the result is an even more reasonable transition. One person expressed a general concern about garage placement though come short in offering any insight as to where garages ought to be placed, which does not leave the applicant much opportunity to respond to that issue. Others expressed concerns about how the rear of the homes might be uniform as opposed to staggered. After the passing of SL2015-86 by the legislature last session, regulating aesthetics for single-family homes is prohibited. And while applicants are free to impose their own aesthetic regulations, “urging” them to do so on the rear of houses seems unreasonable.

Stormwater management is a concern with every new development; however, I have never before heard complaints similar to those offered against this proposed project. The Colony Park neighborhood experiences instances of flooding and standing water regularly with storms. Many of them would request that the developer employ vegetated swales along drainages and roads as opposed to curb and gutter. Specifically, it was explained that treating the water where it is by means of infiltration provided by vegetated swales is preferred to conveying the water elsewhere, as is accomplished via curb and gutter. For an area wrought with issues of flooding and standing water, it seems nonsensical to prefer a method meant to keep and treat water on site. Moreover, swales simply do not infiltrate 100% of the stormwater; some of it still has to move. Furthermore, though vegetated swales are allowable, they are not something that the City encourages or uses often as they present major maintenance problems and complicate the placement of sidewalks and utilities.

Additionally, the applicant has committed to several items in excess of what would otherwise be required. For starters, the applicant has committed to a 30-foot, .4 opacity buffer along the western edge of the property where none would be required. The applicant has elected to reduce the maximum amount of impervious surface to 70% where 100% would otherwise be allowable. Though the proposed zoning is estimated to eliminate 1671 trips compared to the current zoning, the applicant has committed to expanding a portion of Cornwallis to 3 lanes and providing a bicycle lane.

The applicant has also committed to providing 5 affordable housing units and has not requested a density bonus in exchange. In fact, instead of a density bonus, the applicant has only asked the City to punish the developer in the amount of \$25,000 per affordable housing unit that the developer does not provide under the committed schedule. Some have expressed concern that the commitment, as currently proffered, does not ensure that the second conveyance of any of the affordable homes will be in the spirit of the affordable housing definition. While that is an understandable concern, the proffered commitment is better than no commitment to affordable housing at all. Furthermore, the concern actually highlights an ongoing issue in Durham. The lack of a logical, enforceable, and specific affordable housing program in Durham does not leave developers much of a choice when it comes to providing affordable housing units. Given the serious affordable housing shortage we have in Durham (somewhere in the neighborhood of 8,000 units last I checked), I think it unwise to discourage willing developers from providing affordable housing units simply because their proffered commitment is not perfect. The status of affordable housing in Durham is not perfect. The applicant’s commitment; on the other hand, is real. And, it will be helpful to at least 5 Durham families currently in need.

HARRIS – Voted no.

HUFF - There are numerous problems arising from the proposed development of this property. Although the developer has made extensive changes to his plan since he appeared before us in July, the most serious issues remain virtually the same.

First there is the matter of flooding and water quality which was discussed at the meeting by Dr. Kathi Beratan, an environmental scientist from NC State. I suggest her remarks be given special attention. She points out that the amount of impervious surface in the new development is the same as the one presented in July; the amount of mass grading and destruction of trees is the same. Under this type of development the same potentially devastating run-off is guaranteed. This piece of property is going to require some unconventional thinking to protect the homeowners in Colony Park from being flooded as well as to protect the water quality of Sandy Creek as it flows toward Jordan Lake. Pulte Homes so far has not been up to this challenge. I don't know if it's their business model or someone's lack of vision but I have no doubt Pulte Homes could come up with an agreeable plan if they were to step out of their box. I wonder why they don't want to be at the vanguard of low-impact development instead of existing behind the curve. As it is, the issues of flooding and water quality have not been properly addressed and that alone is reason to reject the plan. Then there is the matter of traffic on Cornwallis Rd. The developer has proposed some worthy improvements to Cornwallis but again it isn't sufficient. Interestingly the new development has only 29 fewer trips generated than the previous development proposal. They have almost halved the number of units yet the number of trips remains almost the same. This means that the considerations and misgivings pertaining to the traffic impacts of the previous proposal are essentially still the same. Since traffic wasn't discussed much at the meeting, I will repeat the issues I brought up last time. Quoting from my previous comments: "Then there is the matter of increased traffic on a road that already contains a dangerous intersection. Normally when I assess a prospective zoning I look at the traffic impacts of the new zoning versus the traffic impacts of the existing zoning. According to the numbers the rezoning would result in a negative differential of 1,642

(now 1671) trips. That would seem to be a good thing, however, that number is predicated on the assumption a fast-food establishment would be built on the 1.8 acre of the parcel zoned Commercial General now. The problem with this assumption is that the location of the fast-food establishment would not be visible or easily accessible as the CG zoning is tucked away below grade on the easternmost edge of the property. The site is fully contained within the floodway fringe and the flood

plain. The predictably periodic flooding would make developing this spot an expensive challenge. Access to the CG section using the existing public right of way presents enough complexity at the Cornwallis/501 ramp intersection so that measures would have to be taken to upgrade the intersection and perhaps the entire interchange. Given the estimated high number of trips for fast-food a Traffic Impact Analysis would be triggered and whatever improvements were found to be necessary would

become the financial responsibility of the fast-food developer making the project yet more expensive. Given these drawbacks the location for fast-food or some other high traffic commercial at this spot is exceedingly unlikely. There are much better locations on the boulevard and around South Square. Since it does not seem probable that a fast-food restaurant would locate here, the proposed development with its 1,328 (now 1299) additional trips represents no improvement as regards traffic over the

present zoning. In fact it is worse because at least the fast-food option would generate improvements to the seriously defective interchange at 501 and Cornwallis where traffic at certain times of the day backs up into the southbound lane. There are other problems created by putting this much vehicular pressure on Cornwallis. A woman who lives on Woodburn told us that traffic headed for Duke

going east on Cornwallis turns left on Woodburn in order to avoid the stoplight at 751. There are no sidewalks on Woodburn, children must make their ways to bus stops during peak traffic periods and they must do this by walking in the street and negotiating these stoplight-avoiding commuters. We were told by the developers that their target consumers were Duke employees or people otherwise affiliated with the university. If even some of the purchasers of these units are Duke affiliates, the Woodburn traffic would necessitate expensive improvements: speed bumps, sidewalks, maybe another stoplight. This expense would be borne by the city, as would any improvements found to be necessary at the interchange at 501.” Again we heard from the sellers of this land. Again they spoke in favor of the project not because it is worthy but because they want to divest themselves of their property in a

timely manner. I hope they listened to the concerns of the surrounding community, the environmental experts, and the members of the commission. Maybe they can sit down with Pulte Homes and figure out a solution. Since they still seem to be appealing to their legacy in the community, I have this to say to them from my July comments: “One thing is certain: the legacy of the landowners who are longtime Durham residents will not be served by a project that threatens their neighbors’ properties and

destroys their relationship to the surrounding community. What else is certain is that other deals can be struck.”

HYMAN – Not recommended.

KENCHEN – Voted for. Zoning map change.

MILLER – The city council should deny this rezoning request. The proposed project, as I understand it from the developer’s application, the staff report, my discussions with neighbors and the developer, and the remarks of the speakers at the hearing before the commission, still falls short of what we should reasonably expect for the future development of this site. The Planned Density Residential zone is supposed to promote innovative residential development. The district intent statement contained in the Unified Development Ordinance states the PDR should promote innovative development that is integrated with proposed adjacent uses and compatible with existing patterns of development. The Comprehensive Plan, in policy 4.2.2a, calls for variability of lot sizes and a variety of housing types and styles in new residential developments to avoid monotony. Policy 4.2.2b encourages variation of the location, setback, and orientation of residential garages to avoid prominent and repetitious garage placement. Policy 4.3.3 provides that the design of new development should be appropriate and compatible with its surroundings, “acting as a visual and functional asset to nearby residential areas, and reinforcing the existing community character.” The PDR zone requires a development plan which may contain enforceable commitments. If we are to give meaning to the policies concerning the application of the PDR zone and the policies concerning new residential development reposed in Chapter 4 of the Comprehensive Plan, we must insist that developers include commitments in their PDR development plans that advance our stated policies. If we do not, then the policies we have adopted become just empty words which invite the community’s contempt.

In this case, Pulte could have provided commitments which advance our policy goals. They could have provided for a variety of lot sizes. They could have committed to a better integration of their project into the existing built community. They could have committed to a variety of architectural designs. They could have committed to avoiding the repetitious placement of garages. (It is important to note that recent legislation forbidding cities and counties from regulating certain design aspects of one and two-family homes makes a specific exception for commitments made by developers as a part of a requested rezoning.) But the plan submitted by Pulte is minimal in its requirements and does not contain any commitments directed toward promoting variety of lots sizes or housing types. Nothing in the plan

seeks to relieve monotony. In fact, the illustrative site plan Pulte showed their neighbors and the commission members and the example of the units in a Charlotte subdivision they pointed to as an example of what they plan to build here indicate that their Cornwallis Road development will epitomize the dull sameness and monotony our Comprehensive Plan policies seek to avoid. Because the development plan submitted by Pulte does not contain commitments that demonstrate how their project will satisfy the policy goals set out in UDO for the PDR zone and established in the comprehensive plan for the protection and enhancement of community character, this rezoning request must be denied.

I am concerned now as I was with Pulte's earlier townhouse project, that there is no requirement for a gentle step down in development intensity along this project's shared boundary with its Colony Park neighbors. I acknowledge that the current plan contains a 30-foot wide buffer along a portion of this boundary, but to me this is not the correct way to address a situation where single family homes are to be neighbors with other single family homes. Instead, there should be fewer dwelling units on larger lots along the boundary, so that no Colony Park homeowner will have more than two (or three at most three in the case of one peculiarly wide lot) Pulte neighbors. Under the proposed site plan Pulte showed the neighbors and planning commission members, it appears that a single Colony Park neighbor may have as many as four or five Pulte neighbors. This arrangement of Pulte's dwelling units does not result in the "visual and functional asset to nearby residential areas" which reinforces "the existing community character" contemplated by the Comprehensive Plan. This issue could have been addressed in the development plan, but it is not. Because it is not, this rezoning request should be denied.

Further, I am dismayed that the development plan does not require at least some dwelling units in the project to front on the ample common open space allowed by the plan. The illustrative site plan the developer has shown to the neighbors and to commission members places open spaces to the rear of units. Access is obtained by passing between units. Reorganizing the relationship of at least some of the units to face open spaces would also allow greater variety in parking and garage access. The development plan is silent on this point, but the site plan and Charlotte example provided by the developer indicate the developer's preference for only front-loaded garages for all 126 units. Appropriate commitments in the development plan could prevent this. Because they do not, this rezoning should be denied.

Given the environmental sensitivity of the subject property, its proximity to Sandy Creek, and the history of flooding on this property and neighboring properties, I am reluctant to urge the approval any development project on the land that includes artificial storm water control measures which will be put at risk because they are located in areas which are prone to damaging floods. The development plan's committed elements do not specify what flood control and runoff measures will be employed or assure us that they will be placed outside the flood-prone areas of the site. Because these commitments are absent, this rezoning should be denied.

The thoughtful, collective positions of persons living nearest a proposed rezoning are extremely influential to me. Zoning regulations are justified only if they serve the purpose of protecting the reasonable interests and expectations of those whose homes, businesses, and land may be impacted by the development of nearby property. The neighbors are the principal stakeholders in the outcome of the planning and regulatory changes that Pulte Homes has requested. The neighbors bought their homes and use their property in reasonable reliance upon the scheme of zoning in their area. The protection of their interests is embodied in UDO and Comprehensive Plan polices that require new development to respect existing patterns of development. I note that when Pulte asked for a rezoning of this same parcel last year, the neighbors exercised their right to file a protest petition. That petition

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would have required a supermajority council vote to pass the requested rezoning. Pulte withdrew that rezoning request and filed this new one. In the meantime the law changed and neighbors no longer have a protest petition right. From the perfectly unanimous opposition the neighbors have demonstrated in this case, I believe they would have filed a new protest petition in this case had the right to do so not been taken away from them. Today, now that there is no protest petition right, it is incumbent upon planning staffs, planning commissions, and elected officials to pay closer attention to the concerns of neighbors in rezoning matters and to protect their interests with heightened vigilance. That vigilance, if exercised in this rezoning case, must result in denial.

RILEY – Voted against.

WHITLEY – I voted not to approve. This project is too close to Jordan Lake.

WINDERS – In the 5+ years I have been on the Planning Commission, I and my fellow commissioners have thought that the development plans in many cases have not provided enough information for us to be sure that we are protecting the public interest but voted to recommend approval anyway. This proposal has made more accommodations to address neighbors' complaints and provided more public benefits in the form of trail easements and affordable housing than most cases have. Therefore, in the interest of fairness and consistency I voted to recommend approval. In making their decision, I encourage the Council to consider the following issues.

Environmental concerns: Storm water is the most serious issue for me. We know that flooding is already a problem for the properties located in the low area (flood plain?) at the southern end of Colony Woods. Our City storm water staff person even mentioned that the road might as defined by flood, thus impeding emergency vehicles leaving a nearby station. I am concerned about increasing impervious surface and its' potential impact on Jordan Lake and on the storm water management charges on our water bills. Also, I am concerned about long term maintenance of storm water facilities by an HOA. I chose to trust our staff recommendations and storm water regulations, as we have in previous cases, such as a 2015 (?) case at the intersection of Rt 55 and Carpenter Fletcher and the Meadows at South Point near intersection of Rt 54 and Barbee.

Also of concern is maintaining usable open space in the flood hazard area that is classified Recreation and Open Space in the FLUM. The developer has committed a trail easement and pedestrian access from Colony Woods, but the development plan shows a building and parking envelope that goes across Sandy Creek up to a 30 foot buffer of the zoning line. There should be a commitment to preserve trees and keep buildings out of the designated open space area. The public benefit from having a good trail through this property that hopefully could connect to Duke Forest and Sandy Creek is a big factor in my vote on this case. It would be disappointing if the trail was not surrounded by a natural area.

Traffic The additional cars from this development will still leave Cornwallis with extra capacity. Traffic is worse in other parts of the county. Reducing the number of units from 230 in the original proposal to 126 has certainly reduced the traffic impact of this development.

Design Low impact development (with swales instead of curb and gutter) would be great. The straight line of nearly identical houses is not what the community wants. I would like to see a more innovative and context sensitive design, perhaps with a combination of townhouses and single family or even duplexes. However, we have allowed such development in many places in east and south Durham. I doubt that the proposed new houses will significantly reduce Tryon Drive owners' quality of life or property values. New houses will be some 50 feet (30 foot buffer plus backyard) beyond the property lines of Colony Woods' large lots. Such land use transitions are very common.

Affordable housing commitment The developer is providing a public benefit by making approximately 4% of units affordable at the 60% AMI level. The wording of the commitment may need some work. The mechanism for maintaining affordability long term should be specified at the very least. This location is not in a planned light rail station area, but it is close to major employment centers.

VANN – Affordable housing included in the project. Appears to be below the 15% aspiration 120 homeowners.